

HOUSE BILL No. 1270

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-16; IC 32-28-3.

Synopsis: Common construction wage and fringe benefit liens. Establishes requirements for the procedure used to determine the wage scale for the construction of a public work. Allows, under certain conditions, an apprentice wage. Requires a contractor or subcontractor constructing a public work to file weekly payroll records. Requires that certain provisions related to the common construction wage be included in public works contracts and subcontracts. Makes certain actions a misdemeanor or an infraction. Disqualifies a contractor or subcontractor who has a prior conviction under the common wage law and is convicted of a subsequent, unrelated offense from being awarded a public works contract. Requires the department of labor to resolve disputes relating to the payment of the common construction wage. Makes it a Class A misdemeanor for a contractor or subcontractor to fail to employ United States citizens on a public works project. Allows an employee in the construction trades to record a mechanic's lien for unpaid or unsatisfied fringe benefits and withholdings due.

Effective: July 1, 2004.

Liggett

January 15, 2004, read first time and referred to Committee on Labor and Employment.

C
o
p
y



Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1270

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-16-7-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) Any firm, individual,
3 partnership, limited liability company, or corporation that is awarded
4 a contract by the state, a political subdivision, or a municipal
5 corporation for the construction of a public work, and any
6 subcontractor of the construction, shall pay for each class of work
7 described in subsection (c)(1) on the project a scale of wages that may
8 not be less than the common construction wage.
9 (b) For the purpose of ascertaining what the common construction
10 wage is in the county, the awarding governmental agency, before
11 advertising for the contract, shall set up a committee of five (5) persons
12 as follows:
13 (1) One (1) person representing labor, to be named by the
14 president of the state federation of labor.
15 (2) One (1) person representing industry, to be named by the
16 awarding agency.
17 (3) A third member to be named by the governor.

2004

IN 1270—LS 6806/DI 102+



C
o
p
y

(4) One (1) taxpayer who pays the tax that will be the funding source for the project and resides in the county where the project is located. The owner of the project shall make the appointment under this subdivision.

(5) One (1) taxpayer who pays the tax that will be the funding source for the project and resides in the county where the project is located. The legislative body (as defined in IC 36-1-2-9) for the county where the project is located shall make the appointment under this subdivision.

(c) As soon as appointed, the committee shall meet in the county where the project is located and, **using a procedure that meets the requirements set forth in section 1.5 of this chapter, shall determine** in writing the following:

(1) A classification of the labor to be employed in the performance of the contract for the project, divided into the following three (3) classes:

- (A) Skilled labor.
- (B) Semiskilled labor.
- (C) Unskilled labor.

(2) The wage per hour to be paid each of the classes.

In making its determination, the committee is not required to shall consider only information not presented to the committee at the a meeting that is conducted in accordance with section 1.5 of this chapter. IC 5-14-1.5 (open door law) applies to a meeting of the committee.

(d) The rate of wages determined under subsection (c) shall not be less than the common construction wage for each of the three (3) classes of wages described in subsection (c) that are currently being paid in the county where the project is located.

(e) The provisions of this chapter shall not apply to contracts let by the Indiana department of transportation for the construction of highways, streets, and bridges. IC 8-23-9 applies to state highway projects.

(f) A determination under subsection (c) shall be made and filed with the awarding agency at least two (2) weeks prior to the date fixed for the letting, and a copy of the determination shall be furnished upon request to any person desiring to bid on the contract. The schedule is open to the inspection of the public.

(g) If the committee appointed under subsection (b) fails to act and to file a determination under subsection (c) at or before the time required under subsection (f), the awarding agency shall make the determination and its finding shall be final.

C
o
p
y



(h) It shall be a condition of a contract awarded under this chapter that the successful bidder and all subcontractors shall comply strictly with the determination made under this section.

(i) The provisions of this chapter do not apply to public projects in this state that would otherwise be subject to the provisions of this chapter that are to be paid for in whole or in part with funds granted by the federal government, unless the department of the federal government making the grant shall consent in writing that the provisions of this chapter are applicable to the project.

(j) Notwithstanding any other law, the provisions of this chapter apply to projects that will be:

- (1) owned entirely; or
- (2) leased with an option to purchase;

by the state or a political subdivision (as defined in IC 36-1-2-13).

(k) Notwithstanding any other law, this chapter does not apply to projects in which the actual construction costs less than one hundred fifty thousand dollars (\$150,000).

SECTION 2. IC 5-16-7-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1.5. In making the determination required under section 1(c) of this chapter, the committee shall use a procedure that meets the following requirements:

(1) The committee shall consider the following as evidence of the common construction wage currently being paid in the county where the project is located:

- (A) Data presented by the department of workforce development.**
- (B) Collective bargaining agreements, if applicable.**
- (C) Other information submitted by interested parties.**

Only evidence relating to the wages and benefits currently being paid by construction industry employers may be considered by the committee under this subdivision.

(2) All testimony presented to the committee must be made under oath or affirmation.

(3) Any part of the evidence may be submitted in written form if doing so will expedite the meeting.

(4) Documentary evidence may be received in the form of a copy or an excerpt.

(5) To the extent necessary for full disclosure of all relevant facts and issues, the committee shall afford all interested parties the opportunity to present evidence and arguments and to respond to evidence presented by other interested

C
o
p
y



parties.

(6) The committee's written determination must list the evidence or sources that the committee relied upon in making its determination.

SECTION 3. IC 5-16-7-2.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2.3. (a) A contractor or subcontractor may employ a person as an apprentice to perform work on a contract for the construction of a public work at less than the schedule of wages filed under section 2 of this chapter if all the following conditions are met:

(1) The person is employed under a bona fide apprenticeship program registered with the United States Department of Labor's Bureau of Apprenticeship and Training.

(2) The person is individually registered in the apprenticeship program described in subdivision (1).

(3) The allowable ratio of apprentices to journeymen on the job site in any craft classification is not greater than the ratio permitted to the contractor or subcontractor for the entire work force under the apprenticeship program described in subdivision (1).

(b) A contractor or subcontractor that lists a worker on a payroll at an apprentice wage rate without meeting the conditions set forth in subsection (a) shall pay the worker not less than the rate of wages determined under this chapter for the classification of labor actually performed by the worker.

SECTION 4. IC 5-16-7-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2.5. (a) For each week in which a contractor or subcontractor performs work on a contract for which a schedule of wages was filed under section 2 of this chapter, the contractor or subcontractor shall submit a copy of all payrolls for the work performed on the contract for that week to the state or municipal corporation that let the contract.

(b) The payrolls submitted under subsection (a) must set out accurately and completely at least the following information for each worker:

(1) Name.

(2) Address.

(3) Social Security number.

(4) Labor classification.

(5) Wage rate paid.

C
o
p
y



(6) The daily and weekly number of hours worked.

(7) Deductions made from wages paid.

(8) Actual wages paid.

(c) In addition to the payroll information required under subsection (b), a contractor or subcontractor that employs an apprentice in accordance with section 2.3 of this chapter shall submit written evidence of the following:

(1) The registration of the apprenticeship program with the United States Department of Labor's Bureau of Apprenticeship and Training.

(2) The individual registration forms for each apprentice.

(3) The applicable ratios and wage rates prescribed by the apprenticeship program.

(d) A contractor or subcontractor may submit the payroll information required under subsection (b) in any form the contractor or subcontractor desires.

(e) A contractor is responsible for the submission of the payroll information by all subcontractors performing work for the contractor.

(f) A contractor or subcontractor shall maintain the payrolls required by this section:

(1) during the course of the work; and

(2) for three (3) years after the last date work is performed; on the contract.

(g) A contractor or subcontractor shall:

(1) make the payrolls required by this section available for inspection, copying, or transcription; and

(2) permit interviews of employees during working hours on the job site;

by the authorized representatives of the state or municipal corporation that let the contract and the state department of labor.

SECTION 5. IC 5-16-7-2.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2.7. (a) A subcontract for the performance of any work on a contract for which a schedule of wages was filed under section 2 of this chapter must include as terms of the subcontract:

(1) the schedule of wages filed under section 2 of this chapter;

(2) the certification required by subsection (b);

(3) the requirements of this chapter; and

(4) a requirement that the subcontractor include the terms required in a subcontract under this section as terms in any lower tier subcontract.

C
o
p
y



(b) A contractor that enters into a contract for which a schedule of wages is filed under section 2 of this chapter shall certify that:

(1) neither the contractor nor any person with an ownership interest in the contractor is disqualified from being awarded the contract because of prior violations of the requirements of this chapter; and

(2) no part of the contract will be subcontracted to any person who is disqualified from being awarded the contract because of prior violations of the requirements of this chapter.

(c) A contractor is responsible for the compliance with this section by a subcontractor or lower tier subcontractor that is performing work for the contractor.

SECTION 6. IC 5-16-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) A contractor or subcontractor who knowingly fails to pay the rate of wages determined under this chapter commits a Class B misdemeanor.

(b) A contractor or subcontractor who knowingly or intentionally:

(1) submits a payroll required by section 2.5 of this chapter; or

(2) makes a certification under section 2.7(b) of this chapter; that contains information that is false or incomplete commits a Class A misdemeanor.

(c) A contractor or subcontractor who fails to submit a payroll required by section 2.5 of this chapter commits a Class B infraction.

(d) A contractor or subcontractor who fails to:

(1) make a payroll available for inspection, copying, or transcription; or

(2) permit an interview of an employee;

as required by section 2.5(g) of this chapter commits a Class A infraction.

(e) If the contractor or subcontractor has committed a prior **unrelated** offense under this section, the contract on which the instant offense occurred shall be forfeited and the contractor or subcontractor may not receive any further payment on the contract nor may the state or the municipal corporation making the contract make any further payments on the contract from any of the funds under its charge or control.

(f) In addition to the penalty under subsection (e), a contractor or subcontractor who has a prior unrelated conviction under this section and is convicted of a subsequent offense under this section

C
o
p
y



1 is disqualified for three (3) years after the date of the subsequent
 2 offense from being awarded a contract by the state or a municipal
 3 corporation for construction of a public work.

4 SECTION 7. IC 5-16-7-4 IS AMENDED TO READ AS FOLLOWS
 5 [EFFECTIVE JULY 1, 2004]: Sec. 4. The definitions in this section
 6 apply throughout this chapter:

7 (1) "Common construction wage" means a scale of wages for each
 8 class of work described in section 1(c)(1) of this chapter that is
 9 not less than the common construction wage of all construction
 10 wages being paid in the county where a project is located, as
 11 determined by the committee described in section 1(b) of this
 12 chapter, after having considered:

13 (A) reports from the department of workforce development;
 14 and

15 (B) any other information submitted by any person to the
 16 committee established under section 1(b) of this chapter.
 17 using a procedure that meets the requirements set forth in
 18 section 1.5 of this chapter.

19 (2) "State of Indiana" includes any officer, board, commission, or
 20 other agency authorized by law to award contracts for the
 21 performance of public work on behalf of the state, excepting as
 22 otherwise provided in this chapter.

23 (3) "Municipal corporation" includes any county, city, town, or
 24 school corporation, as well as any officer, board, commission, or
 25 other agency authorized by law to award contracts for the
 26 performance of public work on behalf of any such municipal
 27 corporation. The term also includes a redevelopment commission
 28 established under IC 36-7-14-3.

29 (4) "Public work" includes any public building, highway, street,
 30 alley, bridge, sewer, drain, improvement, or any other work of any
 31 nature or character whatsoever which is paid for out of public
 32 funds, excepting as otherwise provided in this chapter.

33 SECTION 8. IC 5-16-7-6 IS ADDED TO THE INDIANA CODE
 34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 35 1, 2004]: Sec. 6. A dispute relating to the payment of the common
 36 construction wage as determined under this chapter shall be
 37 submitted to the department of labor for resolution.

38 SECTION 9. IC 5-16-7-7 IS ADDED TO THE INDIANA CODE
 39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 40 1, 2004]: Sec. 7. The department of labor shall adopt rules under
 41 IC 4-22-2 to implement this chapter.

42 SECTION 10. IC 5-16-7.5 IS ADDED TO THE INDIANA CODE

C
o
p
y



AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2004]:

**Chapter 7.5. Citizenship of Contractors' and Subcontractors'
Employees**

Sec. 1. This chapter applies to:

- (1) all contracts awarded by the state, a political subdivision,
or a municipal corporation for the construction of a public
work; and
- (2) all subcontracts awarded under a contract described in
subdivision (1).

**Sec. 2. As used in this chapter, "state" includes any officer,
board, commission, or other agency authorized by law to award
contracts for the performance of public work on behalf of the state.**

**Sec. 3. As used in this chapter, "municipal corporation"
includes any county, city, town, or school corporation, as well as
any officer, board, commission, or other agency authorized by law
to award contracts for the performance of public work on behalf
of a municipal corporation. The term includes a redevelopment
commission established under IC 36-7-14-3.**

**Sec. 4. As used in this chapter, "public work" includes any
public building, highway, street, alley, bridge, sewer, drain,
improvement, or any other work of any nature or character that
is paid for out of public funds.**

**Sec. 5. A contract that is awarded by the state, a political
subdivision, or a municipal corporation for the construction of a
public work must specify that only citizens of the United States
may be employed in the performance of the contract or any
subcontract awarded under the contract.**

**Sec. 6. A contractor or subcontractor who knowingly or
intentionally employs a person who is not a citizen of the United
States in the performance of:**

- (1) a contract; or
- (2) a subcontract awarded under a contract;

**for the construction of a public work commits a Class A
misdemeanor.**

**SECTION 11. IC 32-28-3-0.5 IS ADDED TO THE INDIANA
CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 0.5. As used in this chapter,
"fringe benefits and withholdings" means compensation due an
employee employed in the construction trades under a written
contract for benefits in addition to wages, including:**

- (1) holiday pay;

**C
o
p
y**



(2) time off for:

(A) sickness or injury; or

(B) personal reasons or vacation;

(3) bonus pay;

(4) authorized expenses incurred during the course of employment; and

(5) contributions due to or on behalf of an employee.

SECTION 12. IC 32-28-3-1, AS AMENDED BY P.L.151-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) A contractor, a subcontractor, a mechanic, a lessor leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor, a journeyman, a laborer, or any other person performing labor or furnishing materials or machinery, including the leasing of equipment or tools, for:

(1) the erection, alteration, repair, or removal of:

(A) a house, mill, manufactory, or other building; or

(B) a bridge, reservoir, system of waterworks, or other structure;

(2) the construction, alteration, repair, or removal of a walk or sidewalk located on the land or bordering the land, a stile, a well, a drain, a drainage ditch, a sewer, or a cistern; or

(3) any other earth moving operation;

may have a lien as set forth in this section.

(b) A person described in subsection (a) may have a lien separately or jointly upon the:

(1) house, mill, manufactory, or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:

(A) that the person erected, altered, repaired, moved, or removed; or

(B) for which the person furnished materials or machinery of any description; and

(2) on the interest of the owner of the lot or parcel of land:

(A) on which the structure or improvement stands; or

(B) with which the structure or improvement is connected;

to the extent of the value of any labor done, **including fringe benefits and withholdings**, or the material furnished, or both, including any use of the leased equipment and tools.

(c) All claims for wages, **fringe benefits and withholdings, or both wages and fringe benefits and withholdings** of mechanics and laborers employed in or about a shop, mill, wareroom, storeroom, manufactory or structure, bridge, reservoir, system of waterworks or

C
o
p
y



other structure, sidewalk, walk, stile, well, drain, drainage ditch, cistern, or any other earth moving operation shall be a lien on all the:

- (1) machinery;
- (2) tools;
- (3) stock;
- (4) material; or
- (5) finished or unfinished work;

located in or about the shop, mill, wareroom, storeroom, manufactory or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth used in a business.

(d) If the person, firm, limited liability company, or corporation described in subsection (a) is in failing circumstances, the claims described in this section shall be preferred debts whether a claim or notice of lien has been filed.

(e) Subject to subsection (f), a contract:

- (1) for the construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);
- (2) for the construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5);
- (3) for the construction, alteration, or repair of property that is:
 - (A) owned, operated, managed, or controlled by a:
 - (i) public utility (as defined in IC 8-1-2-1);
 - (ii) municipally owned utility (as defined in IC 8-1-2-1);
 - (iii) joint agency (as defined in IC 8-1-2.2-2);
 - (iv) rural electric membership corporation formed under IC 8-1-13-4;
 - (v) rural telephone cooperative corporation formed under IC 8-1-17; or
 - (vi) not-for-profit utility (as defined in IC 8-1-2-125);

regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public; or

(4) to prepare property for Class 2 residential construction;

may include a provision or stipulation in the contract of the owner and principal contractor that a lien may not attach to the real estate, building, structure or any other improvement of the owner.

(f) A contract containing a provision or stipulation described in subsection (e) must meet the requirements of this subsection to be valid against subcontractors, mechanics, journeymen, laborers, or persons

C
O
P
Y



performing labor upon or furnishing materials or machinery for the property or improvement of the owner. The contract must:

- (1) be in writing;
- (2) contain specific reference by legal description of the real estate to be improved;
- (3) be acknowledged as provided in the case of deeds; and
- (4) be filed and recorded in the recorder's office of the county in which the real estate, building, structure, or other improvement is situated not more than five (5) days after the date of execution of the contract.

A contract containing a provision or stipulation described in subsection (e) does not affect a lien for labor, material, or machinery supplied before the filing of the contract with the recorder.

(g) Upon the filing of a contract under subsection (f), the recorder shall:

- (1) record the contract at length in the order of the time it was received in books provided by the recorder for that purpose;
- (2) index the contract in the name of the:
 - (A) contractor; and
 - (B) owner;
- in books kept for that purpose; and
- (3) collect a fee for recording the contract as is provided for the recording of deeds and mortgages.

(h) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit any material, labor, or machinery for the alteration or repair of an owner occupied single or double family dwelling or the appurtenances or additions to the dwelling to:

- (1) a contractor, subcontractor, mechanic; or
- (2) anyone other than the occupying owner or the owner's legal representative;

must furnish to the occupying owner of the parcel of land where the material, labor, or machinery is delivered a written notice of the delivery or work and of the existence of lien rights not later than thirty (30) days after the date of first delivery or labor performed. The furnishing of the notice is a condition precedent to the right of acquiring a lien upon the lot or parcel of land or the improvement on the lot or parcel of land.

(i) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit material, labor, or machinery for the original construction of a single or double family dwelling for the intended occupancy of the owner upon whose real

C
O
P
Y



estate the construction takes place to a contractor, subcontractor, mechanic, or anyone other than the owner or the owner's legal representatives must:

(1) furnish the owner of the real estate:

(A) as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor; or

(B) if IC 6-1.1-5-9 applies, as named in the transfer books of the township assessor;

with a written notice of the delivery or labor and the existence of lien rights not later than sixty (60) days after the date of the first delivery or labor performed; and

(2) file a copy of the written notice in the recorder's office of the county not later than sixty (60) days after the date of the first delivery or labor performed.

The furnishing and filing of the notice is a condition precedent to the right of acquiring a lien upon the real estate or upon the improvement constructed on the real estate.

(j) A lien for material or labor in original construction does not attach to real estate purchased by an innocent purchaser for value without notice of a single or double family dwelling for occupancy by the purchaser unless notice of intention to hold the lien is recorded under section 3 of this chapter before recording the deed by which the purchaser takes title.

SECTION 13. IC 32-28-3-3, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) Except as provided in subsection (b), a person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn statement and notice of the person's intention to hold a lien upon the property for the amount of the claim:

(1) in the recorder's office of the county; and

(2) not later than ninety (90) days after performing labor or furnishing materials or machinery described in section 1 of this chapter.

The statement and notice of intention to hold a lien may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

(b) This subsection applies to a person that performs labor or furnishes materials or machinery described in section 1 of this chapter related to a Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as

**C
o
p
y**



defined in IC 22-12-1-5). A person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn statement and notice of the person's intention to hold a lien upon the property for the amount of the claim:

- (1) in the recorder's office of the county; and
- (2) not later than sixty (60) days after performing labor or furnishing materials or machinery described in section 1 of this chapter.

The statement and notice of intention to hold a lien may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

(c) A statement and notice of intention to hold a lien filed under this section must specifically set forth:

- (1) the amount claimed, **including any fringe benefits and withholdings**;
- (2) the name and address of the claimant;
- (3) the owner's:
 - (A) name; and
 - (B) latest address as shown on the property tax records of the county; and
- (4) the:
 - (A) legal description; and
 - (B) street and number, if any;
 of the lot or land on which the house, mill, manufactory or other buildings, bridge, reservoir, system of waterworks, or other structure may stand or be connected with or to which it may be removed.

The name of the owner and legal description of the lot or land will be sufficient if they are substantially as set forth in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor or, if IC 6-1.1-5-9 applies, the transfer books of the township assessor at the time of filing of the notice of intention to hold a lien.

(d) The recorder shall:

- (1) mail, first class, one (1) of the duplicates of the statement and notice of intention to hold a lien to the owner named in the statement and notice not later than three (3) business days after recordation;
- (2) post records as to the date of the mailing; and
- (3) collect a fee of two dollars (\$2) from the lien claimant for each statement and notice that is mailed.

The statement and notice shall be addressed to the latest address of the

C
o
p
y



owner as specifically set out in the sworn statement and notice of the person intending to hold a lien upon the property.

SECTION 14. IC 32-28-3-9, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) This section applies to a:

- (1) subcontractor;
- (2) lessor leasing construction and other equipment and tools, regardless of whether an operator is also provided by the lessor;
- (3) journeyman; or
- (4) laborer;

employed or leasing any equipment or tools used by the lessee in erecting, altering, repairing, or removing any house, mill, manufactory or other building, or bridge, reservoir, system of waterworks, or other structure or earth moving, or in furnishing any material or machinery for these activities.

(b) Except as provided in section 12 of this chapter, in order to acquire and hold a lien, a person described in subsection (a) must give to the property owner, or if the property owner is absent, to the property owner's agent, written notice particularly setting forth the amount of the person's claim, **including any fringe benefits and withholdings**, and services rendered for which:

- (1) the person's employer or lessee is indebted to the person; and
- (2) the person holds the property owner responsible.

(c) Subject to subsections (d) and (e), the property owner is liable for the person's claim.

(d) The property owner is liable to a person described in subsection (a) for not more than the amount that is due and may later become due from the owner to the employer or lessee.

(e) A person described in subsection (a) may recover the amount of the person's claim if, after the amounts of other claims that have priority are subtracted from the amount due from the property owner to the employer or lessee, the remainder of the amount due from the property owner to the employer or lessee is sufficient to pay the amount of the person's claim.

(f) This section applies to a person described in subsection (a) who gives written notice, to the property owner or, if the property owner is absent, to the owner's agent, before labor is performed or materials or machinery is furnished. The notice must particularly set forth the amount of:

- (1) labor the person has contracted to perform; or
- (2) materials or machinery the person has contracted to furnish; for the employer or lessee in erecting, altering, repairing, or removing

C
o
p
y



any of the buildings or other structures described in subsection (a). A person described in subsection (a) has the same rights and remedies against the property owner for the amount of the labor performed by the person or materials or machinery furnished by the person after the notice is given, as are provided in this chapter for persons who serve notice after performing the labor or furnishing the materials or machinery.

(g) If an action is brought against a property owner under this section, all subcontractors, equipment lessors leasing equipment, journeymen, and laborers who have:

- (1) performed labor or furnished materials or machinery; and
- (2) given notice under this section;

may become parties to the action. If, upon final judgment against the property owner the amount recovered and collected is not sufficient to pay the claimants in full, the amount recovered and collected shall be divided among the claimants pro rata.

SECTION 15. IC 32-28-3-12, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12. (a) This section applies to a person who:

(1) performs work or labor such as:

- (A) grading;
- (B) building embankments;
- (C) making excavations for track;
- (D) building:
 - (i) bridges;
 - (ii) trestlework;
 - (iii) works of masonry;
 - (iv) fencing; or
 - (v) other structures; or
- (E) performs work of any kind;

in the construction or repair of a railroad or part of a railroad in Indiana; or

(2) furnishes material for:

- (A) a bridge, trestlework, work of masonry, fence, or other structure; or
- (B) use in the construction or repair of a railroad or part of a railroad;

in Indiana.

(b) The work, labor, or material described in subsection (a) may be provided under a contract:

- (1) with the railroad corporation building, repairing, or owning the railroad; or

C
o
p
y



(2) with a person, corporation, or company engaged as:

(A) lessee;

(B) contractor;

(C) subcontractor; or

(D) agent;

of the railroad corporation in the work of constructing or repairing the railroad or part of the railroad in Indiana.

(c) A person to whom this section applies may have a lien to the extent of the work or labor performed, ~~or the value of any fringe benefits and withholdings due~~, material furnished, or ~~both~~, a combination of some or all of the amounts described in this subsection, upon:

(1) the right-of-way and franchises of the railroad corporation; and

(2) the works and structures as set forth in this section that may be upon the right-of-way and franchise of the railroad corporation; within the limits of the county in which the work or labor may be performed or the material may be furnished.

(d) A person performing work or labor or furnishing materials under a contract described in subsection (b)(2) is not required to give notice to the railroad corporation under section 9 of this chapter in order to acquire and hold a lien for labor performed, **including any fringe benefits and withholdings due**, or material furnished under the provisions of this section. The performance of the labor or the furnishing of the materials is sufficient notice to the railroad corporation. A lien that is acquired as set forth in this subsection shall be enforced as other mechanic's liens are enforced in Indiana.

(e) A person who, in doing business with a railroad company, has constructed a building or other improvement on a portion of the railroad right-of-way adjacent to the person's place of business may have a lien to the extent of the fair market value of the improvement on that portion of the right-of-way. The lien may be acquired and enforced:

(1) upon abandonment of the right-of-way by the railroad company; and

(2) against the successors in title of the railroad company.

This subsection does not apply to property that is subject to a written agreement providing for the disposition of improvements upon abandonment. Liens acquired under this subsection shall be enforced as other mechanic's liens are enforced in Indiana.

SECTION 16. IC 32-28-3-14, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

C
o
p
y



JULY 1, 2004]: Sec. 14. (a) Except as provided in subsection (b), in an action to enforce a lien under this chapter, the plaintiff or lienholder may recover reasonable attorney's fees as a part of the judgment.

(b) A plaintiff may not recover attorney's fees as part of the judgment against a property owner in an action in which the contract consideration for the labor, **including any fringe benefits and withholdings**, material, or machinery has been paid by the property owner or party for whom the improvement has been constructed.

SECTION 17. IC 32-28-3-15, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. A person who knowingly or intentionally:

(1) performs labor, supplies services, or furnishes material or machinery in the:

(A) construction;

(B) repair; or

(C) remodeling;

of a building, structure, or other work;

(2) accepts payment for the labor, services, material, or machinery furnished and supplied;

(3) at the time of receiving the payment, knows that the person is indebted to another for:

(A) labor, including **fringe benefits and withholdings, and** the cost of renting or leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor;

(B) services;

(C) material; or

(D) machinery;

used or employed in the construction, repair, or remodeling;

(4) fails:

(A) at the time of receiving the payment; and

(B) with intent to defraud;

to notify in writing the person from whom the payment was received of the existence of the outstanding indebtedness; and

(5) causes the person from whom the payment was received to suffer a loss by failing under subdivision (4) to notify the person of the existence of the outstanding indebtedness;

commits a Class D felony.

SECTION 18. IC 32-28-3-16, AS ADDED BY P.L.101-2002, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. (a) This section applies to a construction contract for the construction, alteration, or repair of a building or

C
o
p
y



structure other than:

(1) a Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); or

(2) property that is:

(A) owned, operated, managed, or controlled by a public utility (as defined in IC 8-1-2-1), a municipally owned utility (as defined in IC 8-1-2-1), a joint agency (as defined in IC 8-1-2.2-2), a rural electric membership corporation formed under IC 8-1-13-4, rural telephone cooperative corporation formed under IC 8-1-17, or a not-for-profit utility (as defined in IC 8-1-2-125) regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.

(b) A provision in a contract for the improvement of real estate in Indiana is void if the provision requires a person described in section 1 of this chapter who furnishes labor, **including any fringe benefits and withholdings due**, materials, or machinery to waive a right to:

(1) a lien against real estate; or

(2) a claim against a payment bond;

before the person is paid for the labor or materials furnished.

(c) A provision in a contract for the improvement of real estate in Indiana under which one (1) or more persons agree not to file a notice of intention to hold a lien is void.

SECTION 19. [EFFECTIVE JULY 1, 2004] **(a) Notwithstanding IC 5-16-7-7, as added by this act, the department of labor shall carry out the duties imposed upon it under IC 5-16-7, as amended by this act, under interim written guidelines approved by the commissioner of the department of labor.**

(b) This SECTION expires on the earlier of:

(1) the date rules are adopted under IC 5-16-7-7, as added by this act; or

(2) December 31, 2004.

SECTION 20. [EFFECTIVE JULY 1, 2004] **IC 5-16-7, as amended by this act, and IC 5-16-7.5, as added by this act, apply to contracts for the construction of a public work awarded after June 30, 2004.**

C
o
p
y

